132

Office - Supreme C
FILE
FEB 18
JOHN T. FEY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

NO. 669

CLYDE J. BOWMAN, BERTRAND HOFFMAN, EUGENE DYLL, and PENNSYLVANIA C.I.O. COUNCIL, *Petitioners,*

v.

PENNSYLVANIA STATE CHAMBER OF COMMERCE, et al., *Respondents.*

On Petition for a Writ of Certiorari to the Supreme Court of Pennsylvania.

BRIEF FOR RESPONDENT IN OPPOSITION

CHARLES E. KENWORTHEY
CHARLES DENBY
JAMES H. HARDIE
J. TOMLINSON FORT
747 Union Trust Building
Pittsburgh 19, Pa.

Of Counsel:
NICHOLAS UNKOVIC
JOHN G. WAYMAN
REED, SMITH, SHAW & MCCLAY

SMITH BROS. CO. INC., LAW PRINTERS, 434-436 BLVD. OF ALLIES, PITTSBURGH 19, PA.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

NO. 669

CLYDE J. BOWMAN, BERTRAND HOFFMAN, EUGENE DYLL, and PENNSYLVANIA C.I.O. COUNCIL, *Petitioners,*

v.

PENNSYLVANIA STATE CHAMBER OF COMMERCE, et al., *Respondents.*

On Petition for a Writ of Certiorari to the Supreme Court of Pennsylvania.

BRIEF FOR RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the Supreme Court of Pennsylvania (Appendix A to Petition) is now officially reported at 386 Pa. 306. The opinion of the Court of Common Pleas of Dauphin County appears in 69 Dauph. 136.

QUESTIONS PRESENTED

1. Whether the decision below is based on adequate nonfederal grounds?

2. Whether the decision below contravenes any established federal unemployment compensation policy?

STATEMENT

This litigation involves the validity of provisions of the Pennsylvania Unemployment Compensation Law under which payments of compensation are made mandatory without an opportunity for judicial review. Although an appeal is allowed to the Pennsylvania Superior Court, the statute directs payment, notwithstanding an appeal, on two administrative determinations that the compensation is payable. The statute also provides that no appeal to the Superior Court shall act as a supersedeas. The applicable provisions of the statute are set forth in the margin.[1]

The Pennsylvania Supreme Court, affirming the Dauphin County Court, has held that, under the circumstances of this case, these statutory provisions violate due process under both the Pennsylvania and the Federal Constitutions and contravene an established Pennsylvania policy that administrative action is always subject to judicial review where property rights are involved.

Under the Pennsylvania Unemployment Compensation Law employees are ineligible for compensation when their unemployment is due to a labor dispute other than a lockout.

---

1. Section 501(e) of the Unemployment Compensation Law, Act of December 5, 1936, P.L. [1937] 2897, 43 P.S. § 821(e), provides in part:

> ". . . Provided, That when the board affirms a decision of a referee or of the department allowing compensation, such compensation shall be paid notwithstanding any further appeal: And provided further, That when a referee affirms a decision of the department allowing compensation, in the event of a further appeal to the board, such compensation shall be paid after a period of thirty days from the date of such further appeal if the board has not rendered a decision prior thereto."

Section 511 of this Act provides in part:

> ". . . No appeal to the Superior Court shall act as a supersedeas."

Statement.

In October 1955 a walkout over a labor dispute occurred at nearly all the plants of the Westinghouse Electric Corporation. (R. 103a) The dispute was not finally settled until March 1956.

In December 1955 the Governor of Pennsylvania sent telegrams to the President of the International Union of Electrical Workers and the Chairman and President of Westinghouse, urging that they submit the labor dispute to final and binding arbitration. (R. 104a) The Governor's proposal was promptly accepted by the President of the Union. (R. 106a) It was rejected by the Chairman and President of Westinghouse. (R. 105a)

On February 17, 1956 the Bureau of Employment Security issued a ruling that the refusal by Westinghouse to submit the labor dispute to final and binding arbitration converted, what had been up to that time a strike, into a lockout, thereby making eligible for compensation approximately 23,000 Pennsylvania employees of Westinghouse. (R. 111a, 114a) If payment should be made to all of them for the entire period for which the ruling removed their ineligibility, in excess of $9,000,000 might be paid out of the Unemployment Compensation Fund without an opportunity for a judicial review of the validity of the ruling.

On March 29, 1956, 72 Pennsylvania employers, who are taxpayers and contributors to the Unemployment Compensation Fund, instituted an equity action in the Dauphin County Court asking that the ruling of the Bureau be declared erroneous and that in any event an injunction be granted against the payment of compensation until after review by the Superior Court of a final administrative determination of the issue of eligibility.

The Dauphin County Court refused to pass upon the validity of the ruling, but granted the injunction. The Supreme Court of Pennsylvania affirmed.

ARGUMENT

I.

The Decision Below Rests on Adequate Nonfederal Grounds.

It is true that the Pennsylvania Supreme Court has indicated that in certain circumstances the Pennsylvania due process clause has substantialy the same meaning as the due process clause in the Fourteenth Amendment, and it would be unrealistic to pretend that the decisions of the Supreme Court of the United States have had no influence on Pennsylvania's interpretation of its own due process clause. See *Philadelphia Gas Works v. City of Philadelphia,* 331 Pa. 321, 357, 1 A.2d 156, 172 (1938). For that reason it has become the habit of Pennsylvania lawyers as well as our courts in due process cases to cite decisions of the Supreme Court of the United States as well as decisions of the Supreme Court of Pennsylvania.

But it is obvious from a reading of the opinions below that the decision would have been the same without the Fourteenth Amendment.

The concluding paragraph of that part of the opinion below dealing with the constitutional question appears in 386 Pa. at 326-327, Brief for Petitioners, p. 35, as follows:

> "It is clear from the foregoing cases, particularly the above quoted and cited cases of the Supreme Court of the United States, that a statutory provision which directs that unemployment compensation in large amounts shall be made to claimants before the validity of their claims to such payments are or

may be determined by a Court—in this case the Superior Court of Pennsylvania—is a violation of the due process of law requirements of § 1 of the Fourteenth Amendment of the Constitution of the United States and also of § 9 of Article I of the Constitution of Pennsylvania. Willcox v. Penn Mutual Life Insurance Company, 357 Pa. 581, 590-591, 55 A.2d 521; Palairet's Appeal, 67 Pa. 479; Crawford Estate, 362 Pa. 458, 67 A.2d 124."

Earlier in the opinion (386 Pa. at 321, Brief for Petitioners, pp. 30-31) the Court stated that the statutory provisions requiring payment of unemployment compensation prior to judicial review and prohibiting an appeal to the Superior Court from acting as a supersedeas violate the due process clause of the Constitution of the United States. It cited several decisions of the Supreme Court of the United States. Clearly, however, it cannot be said that the Court regarded these decisions as controlling. The Court relied most heavily on *Chrysler Corp. v. Smith,* 297 Mich. 438, 298 N.W. 87 (1941), cert. den. 317 U.S. 635 (1942), and a subsequent decision by the Supreme Court of Michigan in *Chrysler Corp. v. Unemployment Compensation Commission,* 301 Mich. 351, 3 N.W.2d 302 (1942), holding unconstitutional similar provisions in the Michigan Unemployment Compensation Law. The Michigan Court similarly rested its decision on parallel due process clauses in the Michigan and Federal Constitutions, and, nevertheless, this Court denied certiorari.

Finally the court below relied on a line of Pennsylvania cases establishing the fundamental right, regardless of the Federal Constitution, to a judicial review of

actions by state administrative tribunals affecting property rights. At 386 Pa. at 325, Brief for Petitioners, 34, the Court said:

> "Our decisions hold that property rights which are jeopardized or denied by an administrative agency may be protected by a Court of equity. . . . 'This right had its inception in the Magna Charta.' " [*Harris v. State Board of Optometrical Examiners,* 287 Pa. 531, 135 Atl. 237]

Obviously this court could not reverse the state judgment. The most it could do would be to render an advisory opinion correcting the state court's views as to the Fourteenth Amendment. *Herb v. Pitcairn,* 324 U.S. 117, 125-6.

II.

The Decision Below Does Not Contravene Any Established Federal Unemployment Compensation Policy.

Petitioners argue that the decision below denies them the right to a "speedy" determination of their eligibility for unemployment compensation benefits, which means a determination without the delay involved in a judicial review. They claim that this right can be found in a federal unemployment compensation policy.

In 1935 Congress undertook to encourage the enactment of state unemployment compensation laws by imposing on all employers of eight or more employees a payroll tax of 3 per cent and provided that any state which would enact a law meeting certain minimum standards would be entitled to a credit of 2.7 per cent.

The remaining .3 per cent would be held by the Federal Government and distributed to the states for administrative purposes.

The minimum standards have nothing to do with, and do not even suggest, a policy regarding provisions in the state laws regarding eligibility for benefits or procedures for the determination of contested cases.[1] A state is given complete freedom to develop its own type of unemployment compensation system. *Steward Machine Company v. Davis*, 301 U.S. 548, 595; *Carmichael v. So. Coal & Coke Co.*, 301 U.S. 495, 526; and Parker, *Administrative Law Problems in the Unemployment Insurance Program*, 8 Vand. L. Rev. 436, 439 (1955).

The Secretary of Labor of the United States certified approval of the Pennsylvania law on December 31, 1956, some three months after the Pennsylvania Supreme Court's decision in the present case. 21 Fed. Reg. 163 (1957).

The speed with which the state's courts and administrative agencies process their contested cases is, perhaps unfortunately, a matter over which this Court

---

1. There are only two sets of federally prescribed standards which state legislation must meet: (1) Section 3304 of the Internal Revenue Code sets out specifications which state legislation must meet in order that an employer may deduct from his federal tax return unemployment taxes paid to the state. Section 3305 of the Internal Revenue Code requires the Secretary of Labor to certify to the Governor of every state on December 31 of each year whether his state meets these qualifications. (2) Title III of the Social Security Act provides federal standards which the state must meet in order to obtain grants-in-aid for the administration of their unemployment compensation plan.

has no control. The solution of the problem of excessive delays in the administration of justice is presently receiving wide attention. But those who 20 years ago felt that the administrative agency offered a solution have become sadly disillusioned by experience. And the way, in Pennsylvania, to speed up the disposition of contested unemployment compensation cases is not to eliminate the judicial review at the end of the procedural line, but to eliminate at least one of the procedural steps at the administrative level and speed up the others.[2] As the court below said (386 Pa. at 330, Brief for Petitioners, p. 38):

> ". . . Although it is indisputable that the law's delays almost always cause successful litigants severe economic hardship, the answer is not to short circuit or violate the Constitution, but to expedite (by speed-up or elimination or otherwise) administrative procedure and the time for appeals. . . ."

---

2. In the present case the Common Pleas Court of Dauphin County and the Supreme Court of Pennsylvania heard arguments and rendered carefully considered opinions in less time than it took to complete one step in the administrative processing of the Westinghouse claims. Although the decision of the Bureau was appealed on March 5, 1956 (20 days before the action was started in Dauphin County), the referee to whom the case was referred did not render a decision until October 15, 1956 (15 days after the Supreme Court's decision). To date, the claims are still pending before the Unemployment Compensation Board and are undecided. In fact, the Board has not yet fixed a date for hearing.

III.

Conclusion.

It is respectfully submitted that the petition for certiorari should be denied.

Respectfully submitted,

CHARLES E. KENWORTHEY
CHARLES DENBY
JAMES H. HARDIE
J. TOMLINSON FORT

Of Counsel:

NICHOLAS UNKOVIC
JOHN G. WAYMAN
REED, SMITH, SHAW & MCCLAY